IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.129 of 2006

M/s.V. Prabha & Co. Pvt.Ltd. & Anr.. Applicants

versus

Kuljit Singh Chadha & Anr. .. Respondents

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Mr.P.K. Dhakephalkar with Mr.Chirag Balsara with Mr.H.Rehman i/b M.V. Kini & co. for the applicants.

Mr.Prashant Naik for respondent nos.1 and 2.

CORAM : D.G. KARNIK, J

DATED : 30th August 2006.

ORAL JUDGEMENT:

1. Heard learned counsel for the parties.

2. This civil revision application is directed against the judgement and order dated 18/19th April 2006 passed by the Appellate Bench of the Small

Causes Court, Mumbai in Appeal No.347 of 2004 confirming the judgement and decree of eviction passed by the trial court against the revision applicants.

3. For the sake of convenience, parties are hereinafter referred to by their status in the trial court. Plaintiff nos.1 and 2 and defendant no.2 are real brothers and co-owners of the suit property. The defendant no.1 is a company registered under the Companies Act, 1956, and was in occupation of the property as a tenant since prior to the purchase of the suit property by the plaintiffs and the defendant no.2. The plaintiffs filed a suit against the defendant no.1 bearing R.A.E. Suit no.716/1427 of 1997 for possession on the ground of reasonable and bonafide requirement. The defendant no.2 who is the co-owner of the property was not initially joined as a party to the suit. However on objection of the defendant no.1 that defendant no.2 was a necessary party, plaint was amended and the defendant no.2 was joined as a party defendant to the suit. Subsequently, plaint was again amended and it was alleged that the shareholders of the defendant no.1 Company had sold all their shares to the defendant

no.2 and the defendant no.2 had taken charge of the defendant no.1 company. It was also alleged that transfer of the shares by the shareholders of the defendant no.1 to the defendant no.2 amounted to the illegal transfer of the tenancy and therefore, plaintiffs were entitled to a decree for possession also on the ground that the defendant no.1 had illegally and unauthorizedly sublet or otherwise transferred or assigned its tenancy in the suit property to the defendant no.2.

4. The suit was resisted by both the defendants. After considering of the evidence adduced by the parties, the trial court held that the plaintiffs had proved that they reasonably and bonafide required the suit property for their own use and occupation and business. Trial Court also held that greater hardship would be caused to the plaintiffs by refusing to pass a decree than to the defendants by passing a decree. The trial court however rejected the contention that the transfer of shares by the shareholders of the defendant nos.1 to the defendant no.2 amounted to illegal transfer of the tenancy. In view of the finding in favour of the plaintiffs on the ground of bonafide requirement and

hardship, the trial court passed a decree for possession against the defendants.

5. Aggrieved by the decision of the trial court, the defendant nos.1 and 2 jointly filed an appeal challenging the decree of the trial court. The plaintiffs filed cross-objections against part of the order rejecting their claim for possession on the ground of illegal subletting or transfer of tenancy. After careful re-appreciation of the evidence the appellate bench of the Small Causes came to the conclusion that the plaintiffs had proved that they required the suit premises reasonably and bonafide and also confirmed the finding on the issue of hardship. The appellate bench, however, rejected the cross objections and held that the transfer of shares by the shareholders of the defendant no.1 to the defendant no.2 and his sons did not amount to illegal transfer or assignment of tenancy. In view of these findings, the appellate bench of the Small Causes Court dismissed the appeal.

6. Learned counsel for the defendants submitted that the suit was filed only by two of the three

co-owners without the consent of the third co-owner. The third co-owner was opposed to the filing of the suit. Two of the three co-owners were not competent to file the suit without the concurrence and consent of the third. Counsel for the plaintiffs contesting the contention submitted that as the third co-owner was joined as a party defendant to the suit by the remaining co-owners was perfectly legal and maintainable. Counsel for the parties referred to the two decisions of the Supreme Court viz. Kanta Goel Vs. B.P. Pathak & others reported in (1977) 2 Supreme Court Cases 814 and India Umbrella Manufacturing Co. Vs. Bhagabandei Agarwalla reported in 2004(4) Bom.C.R.936 BCR 936, as also to a decision of a Single Judge of this Court in Jainuddin Abdul Rehman Shaikh Vs. Sitaram Damodar Varvadkar & ors. reported in 1981 Mh.L.J. 498.

7. In Kanta Goel Vs. B.P. Pathak & ors (Supra) the Supreme Court interalia was considering whether the suit by one of the co-owners of the property against a tenant protected under the Delhi Rent Control Act, filed without joining the other co-owners as a party to the suit was maintainable. After referring to its earlier decision in the case

in Sri Ram Pasricha reported in (1976) 4 SCC 184 the Supreme Court held that a co-owner was as much an owner of the entire property as any sole owner of the property. Jurisprudentially, a co-owner owns every part of the composite property along with others and it cannot be said that he is only a part owner or a fractional owner of the property. The Supreme Court rejected the submission that the plaintiff who was a co-owner of the property was not the owner of the premises and held that a suit for eviction filed by a co-owner against the tenant was maintainable. Mr.Dhakephalkar, learned counsel however invited my attention to the observations made in paragraph no.7 of the decision wherein the Supreme Court has observed that in that case it was not called upon to consider the piquant situation that might arise if some of the co-owners wanted the tenant to continue contrary to the relief claimed by the evicting co-owner. Mr.Dhakephalkar, therefore, submitted that the question whether a co-owner was entitled to file a suit for possession of a tenant when the other co-owner was opposed to the filing of the suit has been kept open by the Supreme Court in this case. He submitted that in the present case defendant no.2 had expressly opposed the filing of the suit by his two

brothers who were the co-owners and, therefore, the suit was not maintainable.

8. In India Umbrella Mfg.Co. Vs. Bhagabandei Agarwalla (Supra), the Supreme court was again considering the question whether a co-owner of a premises could alone file a suit for eviction of a tenant. In paragraph no.6 of the decision, the Supreme Court has observed that it was well settled principle of law that one co-owner could file a suit for eviction of a tenant in the property. This principle is based on the doctrine of agency. One co-onwer filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of the other co-owners is assumed unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed inspite of their disagreement. Strongly relying on these observations, Mr.Dhakephalkar submitted that if one of the co-owners objects to the filing of the suit for eviction of a tenant, the other co-owners cannot file a suit for eviction of a tenant. I am unable to pursuade myself to accept the submission for the reasons indicated below:

9. Most of the states in India have enacted Rent Acts which prohibit eviction of tenants except on the grounds specified therein. Where a Rent Act giving protection to a tenant is not applicable, the rights of the parties are governed by the Transfer of Property Act, 1882. In a case where the rights are governed purely by the Transfer of Property Act, a co-onwer can file a suit for eviction of a tenant by joining other co-owner, whether consenting or not, as party defendant to the suits. The need to file suit alone only by joining the other co-owner as party defendant to the suit may arise under various circumstances. In some cases a co-owner may not be available for signing of the plaint though he may have consented to the filing of the suit. In some cases, a co-owner may not agree to share the expenses of litigation and on that count may refuse to sign the plaint. In such cases the suit can be filed by joining the co-owner as a party defendant. In yet another case, a co-owner may collude with the tenant or for any collateral reason refuse to join the other co-owners in filing of the suit. In such a case, the other co-owners are not helpless. They can certainly file a suit against the tenant by joining the

dissenting co-owner as party defendant to the suit. In my view, this is the position in law where a suit is governed by the Transfer of Property Act. The decision of the Supreme Court in the case of Kanta Goel Vs. B.P. Pathak & ors.(Supra) was rendered in a case where the rights of the parties were governed by the Rent Act. The Supreme Court further relaxed the position in the cases governed by any Rent Act by saying that a co-owner can file a suit without joining other co-owners as parties to the suit. It is in this context that the Supreme Court observed in the case of Kanta Goel that it was not required to consider the situation where the other co-onwer wanted the tenant to continue contrary to the relief claimed by another co-owner seeking eviction. Similarly, the observations in India Umbrella Vs. Bhagabandei Agarwalla (Supra) were also mae in the case governed by a Rent Act and cannot be held to mean that where one of the co-onwers dissents in filing of the suit, the remaining co-owners can never file a suit for eviction. In such a situation a co-onwer may not be able to file a suit without joining the dissenting co-onwer as a party to the suit. Under the general law of the land, even if one or more of the co-owners dissent in filing of a suit

the remaining co-owners can always file a suit for eviction by joining dissenting co-onwers as a party-defendants to the suit. Bombay Rent and Lodging Houses Rates Control Act, 1947 (for short, 'the Bombay Rent Act') does not alter this position nor does it in any way restrict the right of a co-owner to file a suit for eviction by joining dissenting co-owners as a party defendants. Any other interpretation would defeat the rights of the other co-owners which are already curtailed by the Rent Act, and make them illusory. A shrewed tenant may win over one of the co-owners and prevent the other co-owners from successfully suing him even on the limited grounds of eviction available under the Bombay Rent Act. Therefore, in my view, the contention of Mr.Dhakephalkar that the suit was not maintainable as defendant no.2 had dissented to the filing of the suit has no merit.

10. Reference must be made to a recent decision of the Supreme Court in Mohinder Prasad Jain Vs. Manohar Lal Jain reported in 2006(2) SCC 724. In paragraph no.11 of the decision, the Supreme Court has categorically laid down that a suit filed by a co-owner is maintainable in law and it is not

necessary for a co-owner to show before initiating eviction proceedings before a Rent Controller that he had taken consent of the other co-owners. In my view, this decision concludes the matter in controversy. Even earlier in Sri Ram Pasricha Vs. Jagannath and others, reported in 1976(4) SCC 184 a three judged Bench of the Supreme Court has held that a co-owner is as much an owner of the property and can file a suit for possession against a tenant. In Jainuddin Abdul Rehman Shaikh Vs. Sitaram Damodar reported in 1981 Mh.L.J. 498, a Single Judge of this Court has also held that even when a co-owner does not consent, the other co-owner can file a suit for eviction against a tenant on the ground of bonafide requirement. These decisions fortify my view.

11. Mr.Dhakephalkar then submitted that since the defendant no.2 along with his sons had purchased all the shares in the defendant no.1 company. Therefore, there was a merger of an interest. The tenancy of defendant no.1 had merged into the ownership of the defendant no.2. The plaintiff therefore could not have filed the suit for eviction under the Bombay Rent Act against the defendant no.2 who was a co-owner of the property. Under section 34

of the Companies Act, 1956, a Company, on incorporation, becomes a juristic person different from its members. By acquiring the shares of the defendant no.1 company, the defendant no.2 would not become the defendant no.1. The defendant no.1 and 2 still remain two separate persons in the eye of law. The defendant no.1 would continue to be a tenant and the defendant no.2 and his sons would merely be its shareholders. There would be no merger of the tenancy and ownership. Hence, this contention of Mr.Dhakephalkar also has no merit.

13. Mr.Dhakephalkar tried to challenge the findings on the question of bonafide requirement as also on the question of hardship. Both the Courts have recorded a concurrent finding of fact as to reasonable and bonafide requirement of the plaintiffs as also on the question of hardship. The view taken by the Courts below is not only a possible view but in my opinion a pre-ponderant view on facts and calls for no interference in exercise of revisional jurisdiction.

14. No other point was urged before me. There is no merit in the revision application which is

hereby dismissed summarily.

15. At the request of the learned counsel for the revision applicant, the interim relief of stay granted by this Court earlier shall continue for a period of four weeks subject to the condition that the applicants filing an undertaking in this court in the usual terms within a period of one week.

D.G. KARNIK, J